

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: <b>R.H. Hummer Jr., Inc. &amp; 2161 Highway 6 Trail, LLC</b>  <b>Iowa County, Iowa</b>	ADMINISTRATIVE CONSENT ORDER  NO. 2012-AQ- <u>26</u> NO. 2012-SW- <u>22</u>
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TO: Ronald Hummer Jr, Registered Agent  
R.H. Hummer Jr., Inc.  
P.O. Box 70  
Amana, IA 52203

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), R.H. Hummer Jr., Inc., and 2161 Highway 6 Trail, LLC (collectively referred to as Hummer) for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Jon Ryk, Environmental Specialist  
Field Office 6  
1023 W. Madison,  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**Relating to legal requirements:**

Carrie Schoenebaum, Attorney for the DNR  
  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/281-0824

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

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promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. 2161 Highway 6 Trail, LLC is the deed holder to property located in Iowa County at Section 33 T80N R10W, which is locally known as 2141 P Ave., Williamsburg Iowa (the site). At this site R.H. Hummer Jr., Inc. does business. Both of these businesses are owned and operated by Ronald Hummer. At this site, Hummer engaged in illegal open burning and disposal of solid waste, this waste originated from various businesses owned by Mr. Hummer.

2. On October 28, 2011, Jon Ryk, an Environmental Specialist of the Department, was in the area of the site and noticed a large debris pile at the site. Because of this, he went to the site and conducted an investigation. While on site, he observed a large pile of solid waste containing wood containers, pallets, metal debris, carpet, Styrofoam, tar paper, shingles, furniture, a tire, plastic buckets and other assorted waste items. Some of the items had been burned. Mr. Ryk then met with Ronald Hummer who showed him a burn pile and indicated that he intended to bury the remaining waste. Mr. Ryk informed Mr. Hummer that it was illegal to have such a pile of waste on his property and that it was illegal to bury such waste. On the same day, a Notice of Violation (NOV) discussing the observed violations was sent to Hummer. This NOV informed Mr. Hummer that the waste cannot be burned or buried and to properly clean up all the dumped material he must dispose of it at a licensed waste disposal facility.

3. On May 11, 2012, Mr. Ryk conducted a follow up inspection at the site. Once on site Mr. Ryk met with an employee of Hummer, who showed Mr. Ryk the area where the waste had been improperly disposed. At this location, Mr. Ryk observed that the area had been filled with burned materials including a television, fluorescent light bulbs, construction and demolition waste, auto upholstery, shingles, and molds of some sort. In addition there was a small pile of unburned truck parts located to the southeast of the burn pile. Mr. Ryk took photographs which document his observations.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

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2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Hummer allowed the burning of various solid wastes. The above stated facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Hummer agrees to do the following:

1. Immediately discontinue the practice of illegal disposal of solid waste and in the future properly dispose of all solid waste;
2. Immediately cease illegal open burning and do not engage in this activity in the future;
3. Within 30 days of the date the Director signs this order submit a letter to the Department's Field Office 6 at the address listed above verifying that the waste which was observed by Mr. Ryk on May 11, 2012, was properly disposed of; and
4. Hummer shall pay a penalty in the amount of \$4,857.00 to the Department within 30 days of the date the Director signs this order.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined

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that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,857.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that it would have cost approximately \$45.00 a ton to properly dispose of the solid waste at a landfill, and it is estimated that approximately 10.44 tons of waste was burned. Further it is estimated that the fee to have roll-offs delivered to the site and the waste transported to the Iowa County Landfill for disposal would have cost between \$370.00 and \$400.00. Therefore, it is estimated that \$857.00 has been saved by not properly disposing of the waste. Therefore, that amount is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Hummer has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Moreover, on October 28, 2011, Mr. Hummer was sent an NOV for illegal disposal and open burning of solid waste thus, he had actual knowledge that his actions were in violation of the law. Based on the above considerations, \$2,500.00 is assessed for this factor.


## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Hummer. For that reason, Mr. Hummer waives his right to appeal this order or any part thereof.

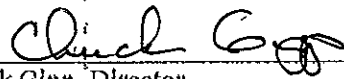
## VIII. NONCOMPLIANCE

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Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
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Ronald Hummer on behalf of  
R.H. Hummer Jr., Inc. & 2161 Highway 6 Trail, LLC

Dated this 2<sup>nd</sup> day of  
NOVEMBER, 2012.

  
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Chuck Gipp, Director  
Iowa Department of Natural Resources

Dated this 13<sup>th</sup> day of  
November, 2012.

Carrie Schoenebaum; DNR Field Office 6; EPA; VI.C and VII.C.1.

